

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7744 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MUSABHAI SODHA FATHER OF THE DETENU HAROONBHAI MUSABHAI

Versus

STATE OF GUJARAT

Appearance:

MR AMAR D MITHANI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 4

MR BHARAT T RAO for Respondent No. 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 04/12/98

ORAL JUDGEMENT

1. The prayer in this writ petition under Article 226 of the Constitution of India is to quash the

detention order, dated 1/7/1998 passed by the District Magistrate against the Petitioner under section 3(2) of the Prevention of the Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 and for writ of habeas corpus for immediate release of the petitioner from illegal detention.

2. The brief facts giving rise to this petition are that the petitioner is a licence-holder of a fair price shop where he distributes food-grains like wheat, rice etc, also Sugar and Edible oil like Palmolin oil and lastly kerosene under the terms of licence. On 23rd June, 1998 a surprise inspection of the petitioner's shop was made by the inspecting officers of the Supplies Department and large number of irregularities were found which indicated that the petitioner was actively and repeatedly engaged in antisocial activities of black marketing of the essential commodities by selling them at higher prices than fixed by the Government. From the detailed grounds of detention those irregularities can be briefly pointed out as under:

3. The first allegation is that the petitioner was selling blue kerosene to authorised ration card-holders at Rs.3.50ps per liter as against fixed price of Rs.3.33ps.per liter, and in this way he has earned undue profit by indulging in black marketing, and the amount so earned comes out to Rs.4,000/- and odd. Other irregularities are that excess stock of Kerosene which was not distributed to ration card-holders was sold in open market at black market price. The details of huge profits earned by the petitioner are given at page 19 of the English translation of the grounds of detention. It was also detected that the petitioner was keeping bogus ration cards and irregular stock register was maintained in which regular distribution of essential commodities was shown whereas it was not actually distributed to ration card-holders. These specific details have been given in the grounds of detention. It was also found that the ration card-holders who were not living in the concerned villages did not collect their ration, still its distribution was shown in the relevant register maintained by the petitioner. The further allegation was that the bogus ration cards were newly issued by the petitioner. Considering that these activities amounted to anti-social activities in the nature of black marketing that the impugned order of detention was passed on 1.7.1998. The grounds along with relevant copies of documents were furnished to the petitioner. This order has been challenged in the instant writ petition by the petitioner.

4. The first contention of the Ld.counsel for the petitioner has been that the petitioner is under detention since 1.7.1998, and the maximum period of detention is only six months which is going to complete in this very month and as such lenient view may be taken and the order of detention may be quashed. This can not be a ground for quashing the detention order. Even if one or two days are left and the detention order is found to be legal and justified, it can not be quashed.

5. The next contention has been that the grounds of detention are based on flimsy grounds. To illustrate this argument, it was pointed out that there is an allegation that as against fixed price of blue kerosene at the rate of Rs.3.33 ps per liter the petitioner has been charging Rs.3.50ps per liter and in this way he was charging 17 paise per liter in excess of fixed price and has earned illegal profits by indulging in such an activity. The contention has been that since small coins are not available the petitioner was forced to charge Rs.3.50ps per liter as against the fixed price of Rs.3.33 ps per liter. The contention seems to be acceptable but on this ground the detention order can not be quashed. There is still another patent allegation that irregular stock of kerosene was being kept in the shop of the petitioner. Full quantity of kerosene was not supplied to the ration card-holders, and the excess quantity of kerosene was driven and sold in the open market at the rate of Rs.7/-per liter. These black marketing activities can not be ignored. It is not the case where the detaining authority was influenced solely with the fact that the petitioner was charging Rs.0.17ps per liter excess from the ration card-holders. Each antisocial activity disclosed in the grounds of detention constitute separate ground for detention and if one ground is found to be ineffective it can not be said that the other grounds were equally ineffective. This charging of Rs.7/-per liter in black market is surely a black marketing activity which could not be ignored by the detaining authority. Other activities alleged against the petitioner were also considered to reach subjective satisfaction that he was engaged in continuous antisocial activities of black marketing of kerosene and essential food articles kept in his fair price shop. Thus, the subjective satisfaction of the detaining authority on this point requires no interference.

6. The next contention has been that it was the duty of the detaining authority to supply all the relevant material and full relevant material should have been

supplied to the petitioner so as to enable him to furnish effective representation against the order of detention, and if it is not done, the constitutional guarantee under Article 22(5) of the Constitution of India is violated and consequently the detention order under challenge would be rendered invalid. In support of this contention, the pronouncement of the Supreme Court in the case of AHAMEDKUTTY vs UNION OF INDIA reported in (1990) 2 SCC 1 was referred. Inter alia, in this case the Apex Court held that communication of grounds of detention by the detaining authority means that the detenu has right to have copies of vital documents irrespective of the fact that whether he knows about their contents or not. The Ld.AGP, however, contended that in the writ petition it is not specified which material document was not supplied by the detaining authority to the petitioner. In reply to this contention, the Ld.counsel for the petitioner has pointed out to Item No.6 of Annexure "C" which was inter alia supplied by the detaining authority to the detenu. It is mentioned at Item No.6 that the copy of the receipt issued against the record seized at the time of inspection, dated 23.6.98 was supplied to the petitioner, and not the copies of the record actually seized. The Ld.counsel for the petitioner has rightly contended that in the grounds of detention the detaining authority has placed specific reliance upon the registers maintained in the handwriting of the petitioner, and since the petitioner is in jail he is unaware of the contents of those registers and it was obligatory for the detaining authority to supply copies of those registers upon which specific reliance was placed in the grounds of detention. Reference to para 14 of the grounds of detention can be made which shows that personal account notebook of the petitioner was seized in which details of sale of each commodity were found mentioned for the period from 6.5.98 to 16.6.98 and further there was a mention in the said notebook at some places in the handwriting of the petitioner the names of 7 persons to whom date-wise supply and sale of foodgrains and kerosene was made. Since the detaining authority placed reliance upon this document and it was seized from the custody of the petitioner at the time of surprise inspection, the detaining authority should have supplied its copy to enable the petitioner to furnish effective and complete reply in his defence. Since this was not done it has violated the constitutional guarantee of the petitioner contained in Article 22(5) of the Constitution of India and it has rendered the impugned detention order illegal.

7. Another ground has been that the detaining authority has not considered the alternative efficacious

remedy which has rendered the impugned order illegal. Ld.counsel for the petitioner has contended that the licence of the fair price shop of the petitioner could have been suspended and could have been cancelled and this could have immediately prevented the nefarious activities of the petitioner, namely, black marketing in essential commodities. In reply to this Ld.AGP contended that the remedy of cancellation of licence is lengthy procedure and if this procedure would have been followed it would have taken time and it would have permitted the petitioner to continue his antisocial activities. The contention may be correct to some extent, but if the licence was suspended, the petitioner could not have sold the articles from the shop, and the proceedings for cancellation could have continued thereafter. Careful examination of grounds of detention reveal that the detaining authority had considered only the prosecution of the petitioner under section 3/7 of the Essential Commodities Act and also stringent action under section 12AA of the Rules. However, there is no specific or implied mention in the grounds of detention. That it was in the mind of detaining authority that suspension/cancellation of licence could not have effectively prevented the petitioner from further indulging in black marketing activities. The contention of the Ld.AGP that the mention in the grounds of detention that the action under Essential Commodities Act would have been insufficient includes the action of suspension as well as cancellation of licence. It is difficult to subscribe to this view putforth by the Ld.AGP. On identical facts, the Division Bench of this Court in PARSHOTTAMBHAI NAVALRAM KHEMANI vs STATE OF GUJARAT reported in 26(2) GLR 620 held that if the alternative remedy was not considered by the detaining authority, the order of detention has to be held as invalid. It was observed by the Division Bench of this court in this case that it is obvious that whether such drastic remedies which can serve the purpose of preventing the petitioner from indulging in alleged nefarious activities can be resorted to will be a vital aspect of the matter which should enter the subjective satisfaction exercised by the detaining authority before the detention order is passed. Alternative remedies, according to the Division Bench, may be by way of prosecution under the Essential Commodities Act, by way of departmental action against the concerned licence-holder by way of cancellation of licence, suspension of licence, confiscation of stock etc. This vital consideration must permeate the process of subjective satisfaction of the detaining authority before the orders of detention are passed. If these vital

considerations have not entered in exercise, the exercise would not be comprehensive enough and would be liable to fail on account of non-application of mind to all the material vital aspects having direct impact on the subjective satisfaction to detain the concerned petitioner. It is further clear from this pronouncement that if this exercise was undertaken by the detaining authority its subjective satisfaction can not be questioned by saying that the consideration of alternative remedy was not satisfactory or improper.

8. In the instant case, the stock from the shop of the petitioner has not been confiscated as was informed by the Id.counsel for the petitioner. Likewise, no departmental action has been taken for cancellation or suspension of licence. Simply because alternative remedy of prosecution under section 3/7 of the Essential Commodities Act was in the mind of the detaining authority it can not be accepted that other efficacious alternative remedies were also in the mind of the detaining authority and it for one reason or the other found that such remedies could not be effective. Since in the grounds of detention alternative remedy of suspension and/or cancellation of licence was not taken into consideration, the impugned order becomes illegal and invalid.

9. The next contention has been that three representations, dated 28.7.98 were sent simultaneously to the detaining authority, the State Govt and the Central Govt, but the petitioner was not made aware of the result of those representations. This ground has absolutely no force. In the writ petition incorrect date of representation is shown as 27.8.98. It is, however, admitted in the course of arguments that only one representation, dated 28.7.98 was sent to the authorities. The counter-affidavit of Shri P.D.Shah, Under Secretary to the Govt.of Gujarat shows that one un-dated representation from the father of the petitioner was received by the Dist.Magistrate. It was forwarded to the State Govt under letter of the District Magistrate, dated 1.8.98. It was received in the concerned department of the State Govt on 3.8.98. On 5.8.98 the representation was rejected and decision was communicated to the detenu under letter dated 5.8.98 through the jail authorities. The record shows that the result of the representation was communicated by the State Govt to the detenu through jail authorities. No enmity between the petitioner and the jail authorities is alleged. Consequently, there is no ground to presume that the jail authority has not informed the detenu of the

communication received from the State Govt. The State Govt disposed of the representation within two days and there was thus expeditious disposal of representation by the State Govt.

10. The Central Govt also disposed of the representation which is clear from the counter-affidavit of Alice Chacko, Under Secretary in the department of Consumer Affairs, Ministry of Food & Consumer Affairs, Govt of India, New Delhi. In para 4 of this counter-affidavit it is mentioned that an undated representation of July, 1998 given by the father of the detenu was received in the concerned section on 4.8.98. Comments of the State Govt were telegraphically called for on the same day. Comments were received on 7.8.98 and decision was taken on 10.8.98 and representation was rejected. Central Govt intimated to the Superintendent, District Jail, Bhuj by telegram and simultaneously communicated this decision to the State Govt. There is no reason to disbelieve this counter-affidavit inasmuch as no rejoinder has been filed. Thus, the Central Govt decided the representation within six days. Contention to the contrary that the fate of the representation has not been made known to the petitioner has no force. This ground is thus without any substance.

11. I also do not find any merit in the contention that the grounds of detention have been prepared on mere presumptions. On the other hand, grounds were prepared with specific data disclosed therein.

12. No other point was pressed. In view of the aforesaid discussion, it is manifest that the impugned detention order has been rendered illegal for two reasons, firstly, that the copies of relevant and material documents, especially account note book in the handwriting of the petitioner were not supplied to him and secondly the detaining authority has not considered the efficacious alternative remedy of suspension/cancellation of the licence of the petitioner. As a result thereof, the impugned order of detention has to be quashed. Writ petition therefore succeeds and is hereby allowed. Detention order, dated 1.7.98 is hereby quashed. Petitioner shall be released forthwith unless he is wanted in someother case.

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